THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.16297 of 2007

Date: .11.2007

Between:

M/s. Sri Gayatri Granites
Palakonda, Srikakulam District.

... PETITIONER

AND

Government of A.P., rep., by its
Secretary, Industries & Commerce
M.II (1) Department,
Secretariat, Hyderabad & others.

... RESPONDENTS

THE HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.16297 of 2007

ORDER:-

Heard Sri P. Venugopal, learned counsel representing the petitioner, the learned Assistant Government Pleader for Industries, Smt. Shoba and Sri Raghu representing the respondents.

2. This Court issued Rule Nisi on 31.07.2007. Counter-affidavit of respondent No.4 is filed.

3. Sri Venugopal, learned counsel representing the petitioner had taken this Court through the averments made in the affidavit filed in support of the writ petition and would maintain that in the facts and circumstances of the case, it cannot be said that the order made by this Court in WP.Nos.1883, 1884 and 4483 of 2006 had been complied with since the petitioner though interested party was not put on notice at all. Even otherwise, the learned counsel would submit that in matters of this nature three cannot be any compromise at all and the Government is expected to consider the case of the petitioner for grant of mining lease for colour granite in the light of the judgment and in view of the facts and circumstances the writ petition to be allowed.

4. On the contrary, the learned Assistant Government Pleader for Industries had taken this Court through the contents of the counter-affidavit and would maintain that in the facts and circumstances of the case, the petitioner has no locus standi at all to maintain the writ petition since he had not availed the remedy of revision under Rule 35-A of the A.P. Mines and Minerals (Concession) Rules, 1966, hereinafter in short referred to as Rules for the purpose of convenience nor challenged the order of rejection made on 20.06.2005. Further, the learned Assistant Government Pleader would submit that the application of the petitioner was rejected on 20.06.2005 as it was for the grant of Road Metal and Building Stone and hence no notice was given to him for hearing. The further stand taken related to the conversion of the application being impermissible. Hence, the learned Assistant Government Pleader would submit that in the light of the stand taken in the counter-affidavit by the 4th respondent the petitioner is not entitled to any of the reliefs prayed for and the writ petition is liable to be dismissed.

5. Smt. Shoba and Sri C. Raghu, learned counsel representing certain contesting respondents would maintain that in the facts and circumstances of the case, the benefit, if any, under Rule 35-C of the Rules, cannot be taken aid of by the petitioner. The learned counsel also would submit that the order made in

WP.Nos.1883, 1884 and 4483 of 2006 had been complied with in true spirit and since the ground on which the impugned order in the prior writ petitions had been set aside being in the light of Rule 35-C (5) of the Rules, the writ petitioner would not fall under the said category and hence, the question of violation of principles of natural justice would not arise in the present case.

6. M/s. Sri Gayatri Granites, a proprietary concern, represented by its proprietor filed the present writ petition for a writ of mandamus declaring memo No.12748/M.II (1)/2006 dated 02.04.2007 on the file of the 1st respondent as well as the proceedings in L.Dis. proceedings No.914/Q/2004 dated 20.06.2005 on the file of the 3rd respondent as illegal, arbitrary, contrary to the principles of natural justice, contrary to the order dated 08.08.2006 made in W.P.Nos.1883, 1884 and 4483 of 2006, and also violative of Article 14 of the Constitution of India and set aside the same and consequently stay all further proceedings pursuant to the said memo and pass suitable orders.

7. The petitioner states that he made an application on 27.02.2004 to the 4th respondent for grant of lease in respect of 5 hectares of land in Sy.No.178 of Konisa Village, Gajapathi Nagaram Mandal, Vizianagaram District for extraction of road metal and building stone in accordance with the provisions of the Rules. A copy of the said application is placed before this Court.

8. In furtherance of the said application, the 4th respondent had issued notice to the petitioner informing that he should attend for a joint survey to be held on 08.03.2004. Accordingly, on 08.03.2004, the petitioner was present for the joint survey, but the 4th respondent postponed the joint survey and stated that it would be conducted on 07.07.2004. Even on 07.07.2004, the petitioner attended, but once again the 4th respondent postponed the survey to 28.10.2004. Even on the said date, the petitioner attended, but the joint inspection could not take place.

9. It is further stated that No Objection Certificate had been issued by the concerned Mandal Revenue Officer for grant of lease. The Mandal Revenue Officer, Gajapathinagaram Mandal vide letter dated 20.03.2004 issued No Objection Certificate in respect of the land for which the petitioner made an application and a copy of the said letter is also produced before this Court.

10. Further, it is stated that the petitioner was under the impression that the 4th respondent would call him for joint inspection and accordingly accord lease in

his favour for extraction of road metal and building stone and to the utter surprise and disbelieve of the petitioner, a show cause notice dated 31.03.2005 was issued by the 3rd respondent. A copy of the said show cause notice is also produced before this Court.

11. It is also averred that on a reading of the show cause notice, it is stated that since the Geologist concerned had given a report stating that the land for which the petitioner made an application for extraction of road metal is useful for colour granite and as such why his application should not be rejected. On the said show cause notice the petitioner gave an explanation by letter dated 12.04.2005 wherein he requested the authorities to give one week time to convert his application for extraction of colour granite, since the application proforma for the said colour granite is different from road metal and the amount to be deposited is higher than the road metal.

12. Further, it is stated that the petitioner filed another application for colour granite on 15.04.2005 by remitting the fee of Rs.7,500/- by challan and deposited Rs.50,000/- by way of demand draft at the rate of Rs.10,000/- per each hector. The same had been cancelled by the 4th respondent by letter dated 15.04.2005. The said letter is also produced before this Court.

13. It is also stated that in utter breach of the provisions of the A.P. Mines and Minerals (Regulation & Development) Act, 1957 hereinafter in short referred to as the Act for the purpose of convenience and the Rules the rejection order dated 20.06.2005 was made by the 3rd respondent and a copy of the said rejection order is also placed before this Court. The said rejection order is per se illegal, arbitrary and contrary to the provisions of the Act and the Rules and the same is violative of Article 14 of the Constitution of India. In the said rejection letter names of the applicants are mentioned and this name is shown at Sl.No.6 in the table. In the said rejection letter it is stated that applications of applicant Nos.1 to 3 and 6 are rejected. It is further to state that though the petitioner made an application for colour granite on 15.04.2005, which had been cancelled, the same had not been mentioned for the reasons best known to the authorities. It is also stated that the names of 1st to 3rd applicants (6th to 8th respondents in the writ petition) had been mentioned twice at Sl.No.7 to 9 respectively and this would go to show that the authority had deliberately removed the application of the petitioner from the colour granite having cancelled the same, which is also within the time.

14. The 5th respondent and two others filed W.P.Nos.1883, 1884 and 4483 of

2006 before this Court questioning the memo dated 19.01.2006 issued by the 1st respondent. The learned judge allowed these writ petitions and the relevant portion of the order is hereunder:

> "It may be appropriate to have a look at the relevant rule, Rule 35-C(5), specifies that on receipt of the application the Director or State Government shall send a copy of the application to each of the parties impleaded under sub-rule (3) specifying a date on or before which he may make his representation if any against the appeal or revision application filed under sub-rule(1).
> On a careful analysis of the facts, this Court is of the considered opinion that the said rule had not been complied with and no appropriate opportunity had been given to all the parties who were interested in having a hearing. Several of the decisions referred to supra were cited and elaborate submissions were made both on factual aspects and also on certain questions of law involved in the matter.
> Quasi judicial authorities while dealing with the matters and disposing of matters are expected to be cautious in affording opportunity to the parties and also in following the Rules governing the field and in observing the principles of natural justice. The practice of making order in undue haste in disregard of the principles of natural justice and the relevant Rules governing the field, may have to be deprecated.
>
> Inasmuch as the common impugned order questioned in all these writ petitions, is being set aside on the ground that Rule 35-C(5) referred to supra had not been complied with and the same was made in violation of principles of natural justice and also in undue haste, this Court directs the competent authority to give reasonable opportunity to all the parties by complying with the Rule aforesaid and pass appropriate orders by taking all the facts and circumstances into consideration and also the decisions cited by both the parties and also taking into consideration the respective stand taken by the parties in the respective grounds of the pleadings of the parties before this Court.
>
> With the above observations, the impugned order in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 is hereby quashed as being violative of principles of natural justice and also contrary to rule 35 of the Rules referred to supra and the matter is remitted to the Government for the purpose deciding the matter afresh in the light of the observations specified supra.
>
> Accordingly the writ petitions are allowed to the extent indicated above. Inasmuch the matter is being remitted again to the Government, for the purpose of affording opportunity to all the parties concerned and to make orders afresh in accordance with law, the parties to the litigation to bear their own costs.
>
> It is needless to say that the Government, the 1st respondent in W.P.No.1883 of 2006 to dispose of the matter, in accordance with law, at an early date."

15. The petitioner also had taken a stand that the learned judge while setting aside the order in memo dated 19.01.2006 made by the Government in exercise of its revisional power directed the Government to give reasonable opportunity to all the parties that means that learned judge is aware of the fact that there are others,

who had not approached this Court and hence, the learned Judge had given such a direction. Further, it is stated that after the matters are remanded to the Government in terms of the order made by the learned Judge of this Court, the Government had issued memo dated 02.04.2007. The said memo No.12748/M.II(1)/2006 dated 02.04.2007 reads as under:

"GOVERNMENT OF ANDHRA PRADESH
INDUSTRIES AND COMMERCE M.II(1) DEPARTMENT

Memo.No.1748/M.II(1)/2006 Dated 02.04.2007

Sub:- Mines and Quarries – Revision Applications filed by M/s. Sri Surya Constructions, M/s. sunitha Constructions, M/s. Laxmi Constructions, against proceedings dated 20.06.2005 of Deputy Director of Mines and Geology, Visakhapatnam and proceedings dated 29.07.2005 of Director of Mines and Geology, Hyderabad – Orders of High Court of A.P. in W.P.Nos.1883, 1884 and 4483 of 2006, dated 08.08.2006 – Heard the case inpursuance of orders of High Court – Revised Orders – Reg.

Ref:- 1) Govt. Memo.No.14796/M.II(1)/2005-5, dated 19.01.2006.
2) Orders of High Court in W.P.Nos.1883, 1884 and 4483/06, dated 08.08.2006.

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The Director of Mines and Geology vide his proceedings dt. 29.07.2005 granted quarry lease in favour of M/s. Galaxy Rockmin Pvt. Ltd., and M/s. Natraj Enterprises Granites for Colour Granite over an extent of 17.00 hects., and 14,000 hects., respectively in the Sy.No.178 of Konisa Village, Gajapathinagaram Mandal, Vizianagaram District for a period of 20 years under Rule 12(5)(a)(1) of APMMC Rules, 1966 while rejecting the subsequent application of M/s. Laxmi Constructions, M/s. Surya Constructions, and M/s. Sunitha constructions.

2. Aggrieved by the rejection orders issued vide proceedings No.35464/R1-2/2003, dated 29.07.2005 by the Director of Mines and Geology, M/s. Sri Surya Constructions, M/s. Sunitha Constructions, M/s. Laxmi Constructions filed revision application before the Government under Rule 35-A of APMMC Rules, 1966.

3. The Government after examining the revision applications and after hearing the revision applicants, issued orders vide reference 1st cited on the revision applications filed by M/s. Sri Surya Constructions, M/s. Sunitha Constructions and M/s. Laxmi Constructions as follows.

"The Revision Applications filed by M/s. Sri Surya Constructions, M/s. Sunitha Constructions, M/s. Laxmi Constructions, have been examined by Government in detail in consultation with the Director of Mines and Geology and in order to dispose of the revision applications, a personal hearing was conducted on 15.10.2005 with all concerned. The revision petitioners as well as impleaded party have attended the hearing and presented their grievances. The Director of Mines and Geology, Hyderabad also explained the issue. After hearing the arguments of the petitioners, implead party and going through the material on record, it is observed that orders issued by both the Deputy Director of Mines and Geology, Visakhapatnam and Director of Mines and Geology, Hyderabad are not in conformity with rules and against the principles of natural justice and the applications filed by the revision petitioners are prior to the applications of the

impleaded party. Even though they applied for road metal and building stone, when the material is found to be useful for better purposes, they are also inclined to make use of the said material for better purpose. The principles of natural justice require an opportunity to the earlier applicants to opt the usage of the mineral and if they are not prepared to take granite useful for cutting and polishing, the subsequent applications would have been considered. Whereas when they are interested to make use of the material for better purpose, their case would have been first considered. Incidentally in a granite quarry, lot of waste is generated and the waste can be used for road metal and building stone and the useful material will be used for cutting and polishing.

In the circumstances, the rejection proceedings dated 20.06.2005 of the Deputy Director of Mines and Geology, Visakhapatnam and the orders issued by the Director of Mines and Geology, vide his proceedings No.35464/R1-1/2003 dated 29.07.2005 are hereby set aside.

Considering these facts, since already the Director of Mines and Geology has granted the leases to the impleaded party, it is decided to divide the area as indicated below:

1. The entire area available including the excess area arrived at by the Department after grant of the leases may be divided into equal parts, i.e., eastern portion and west portion.

2. The present grantees may be allocated one half of the said area and the other half area may be granted to the revision petitioners, since they are the first applicants for this area.

3. The first option may be given to the applicants at Sl.No.4 and 5 to select the area (i.e., either Eastern half or Western half of the total area) as per priority of serial number of application between them and the rest of the area may be reallocated to the Revision Petitioners as per the priority of serial number of application among them.

The Director of Mines and Geology, is directed to issue modified orders to this effect accordingly and ensure that all the parties have proper path to approach their respective quarry areas. The Director of Mines and Geology is directed to dispose off the implead petitioner as per priority. All the Revision Applications are disposed of accordingly."

4. Aggrieved by the above, W.P.Nos.1883, 1884 and 4483 of 2006 have been filed by M/s. Galaxy Rockmin Pvt. Ltd., M/s. Natraj Enterprises and M/s. Orion Granites respectively.

5. The petitioners have prayed the Hon'ble High Court that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order or writ one in the nature of writ of Certiorari calling for records in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 and quash the same as arbitrary, illegal, unjust and violative of principles of natural justice and contrary to A.P.Minor Mineral Concession Rules, 1966 and Granite Conservation Rules 1999.

6. The Hon'ble High Court in its order dated 08.08.2006 in the said W.Ps. have issued common order as follows:

"It may be appropriate to have a look at the relevant rule, Rule 35-C(5), specifies that on receipt of the application the Director or State Government shall send a copy of the application to each of the parties impleaded under sub-rule (3) specifying a date on or before which he may make his representation if any against the appeal or revision application filed under sub-rule(1).

On a careful analysis of the facts, this Court is of the considered opinion that the said rule had not been complied with and no appropriate opportunity had been given to all the parties who were interested in having a hearing. Several of the decisions referred to supra were cited and elaborate submissions were made both on factual aspects and also on certain questions of law involved in the matter.
Quasi judicial authorities while dealing with the matters and disposing of matters are expected to be cautious in affording opportunity to the parties and also in following the Rules governing the field and in observing the principles of natural justice. The practice of making order in undue haste in disregard of the principles of natural justice and the relevant Rules governing the field, may have to be deprecated.

Inasmuch as the common impugned order questioned in all these writ petitions, is being set aside on the ground that Rule 35-C(5) referred to supra had not been complied with and the same was made in violation of principles of natural justice and also in undue haste, this Court directs the competent authority to give reasonable opportunity to all the parties by complying with the Rule aforesaid and pass appropriate orders by taking all the facts and circumstances into consideration and also the decisions cited by both the parties and also taking into consideration the respective stand taken by the parties in the respective grounds of the pleadings of the parties before this Court.

With the above observations, the impugned order in Memo No.14796/M.II(1)/2005-06 dated 19.1.2006 is hereby quashed as being violative of principles of natural justice and also contrary to rule 35 of the Rules referred to supra and the matter is remitted to the Government for the purpose deciding the matter afresh in the light of the observations specified supra.

Accordingly the writ petitions are allowed to the extent indicated above. Inasmuch the matter is being remitted again to the Government, for the purpose of affording opportunity to all the parties concerned and to make orders afresh in accordance with law, the parties to the litigation to bear their own costs.

It is needless to say that the Government, the 1st respondent in W.P.No.1883 of 2006 to dispose of the matter, in accordance with law, at an early date."

7. Out of 7 applications filed for this area, previously the grant orders were issued in favour of 6th applicant i.e., Sri Gayatri Granites by dividing the area into two halves vide Memo.No.14796/M.II(1)/05-06, dated 19.01.2006. Aggrieved by these orders, the previous grantees have filed WP and the Hon'ble High Court directed for giving an opportunity to the respondents and to decide the issue afresh.

8. Pursuant to the directions of the Hon'ble High Court in WP.Nos.1883, 1884 and 4483 of 2006 dated 08.08.2006 the revision petitioner as well as respondents were called for hearing on 20.01.2007. During the time of hearing, the revision petitioner and the respondents have come to a compromise and filed a compromise petition.

9. According to the said compromise petition, the group of revision petitioner companies/firms and also the group of respondent companies would like to share the areas in the ratio of 60:40 (i.e., 60% to be held by M/s. Nataraj Enterprises Granites and Galaxy Rockmin Private Limited and 40% by M/s. Sri Surya Constructions, M/s. Sunitha Constructions and M/s. Laxmi Constructions as per the terms arrived in the said compromise proposals. Considering the said compromise proposals, the revision petition is disposed of with a direction to the Director of Mines and Geology to grant the leases strictly in conformity with the said compromise proposals among the revision petitioner as well as

respondents to whom the leases were earlier granted.

10. As far as M/s. Orion Granite is concerned, the application deserves to be rejected since they do not have any priority.

11. The Director of Mines and Geology is directed to take necessary further action in the matter.

Y. SRILAKSHMI
SECRETARY TO GOVERNMENT

To
The Director of Mines and Geology, Hyderabad
Copy to:
M/s. Galaxy Rockmin Private Limited, No.78, Chaterdral Road, Chennai – 86."

16. In para 7 of the said memo, the Government had stated as if other grantees had filed writ petition against the petitioner and that previously the petitioner had been granted orders by dividing the area into two halves. It is stated that the petitioner had neither received any granting order nor received any notice in the writ petition said to have been filed by the previous grantees. Further specific stand had been taken that directly speaking the petitioner need not question the rejection order inasmuch as the same had been set aside, the learned Judge had directed the Government to consider all the applicants after giving opportunity. As an abundant precaution, the petitioner is questioning the rejection order as well since application dated 15.04.2005 had not been mentioned in the rejection order. The impugned order in the instant writ petition is the rejection order dated 20.06.2005 and also the memo dated 02.04.2007. The rejection order is per se arbitrary and illegal and similar rejections were set aside by this Court in the writ petitions referred to supra. It is also stated that under the provisions of the Act and the Rules made therein, the authority cannot pass orders in the alleged compromise said to have been reached between the revision petitioner companies, firms and also the group of respondent companies. By virtue of the said compromise, no individual can be called upon to act on such a compromise and the Government cannot act upon such compromise since the State intends to distribute its largesse. By virtue of the impugned memo, the proposals of the unofficial respondents had been considered by the Government, which directed the 2nd respondent to grant lease in tune with the compromise proposal. The said action of the Government is arbitrary and illegal and liable to be set aside. There cannot be any compromise in such matters. The Government had to consider even the case of the petitioner for granting mining lease for colour granite since the learned Judge directed that all cases to be considered as per the Judgment. Since the same was not done and since the Government had not issued any

notice or any opportunity to the petitioner, the impugned memo is violative of principles of natural justice and it is also contrary to the Rules and the action is totally unfair, unjust, arbitrary being violative of Article 14 of the Constitution of India as well.

17. In the counter-affidavit filed by the 4th respondent, it is averred that it is a fact that the 4th respondent received an application on 20.02.2004 for grant of quarry lease for road metal and building stone in Sy.No.178 of Konisa Village, Gajapathinagaram Mandal, Vizianagaram District over an extent of 5 hecteres for a period of ten years from M/s. Sri Gayatri Granites with all relevant documents required under the Rules. Prior to the application, the Assistant Director of Mines and Geology, Vizianagaram received quarry lease applications for road metal and building stone and also colour granite as detailed below:

Sl. No.	Name of the applicant Co./Individual S/Sri	Date of receipt	Sy.No.village And Mandal	Mineral Applied for	Extent in Hects	Remks if any
1.	M/s.Lakshmi Constructions	18.10.2003	178, Konisa Vg. Gajapathinagaram Mandal	RM & BS	15-00	No objection certificate received
2.	M/s.Sri Surya Constructions	-do-	-do-	-do-	15-00	-do-
3.	M/s.Sunitha Constructions	19.10.2003	-do-	-do-	12-00	
4.	M/s.Galaxy Rockmin (p) Ltd.,	27.10.2003	-do-	color granite	41.50	-do-
5.	M/s.Nataraj Enterprises	-do-	-do-	-do-	35-00	-do-
6.	Sri Gayathri Granites	28.2.2004	-do-	RM&BS	5-00	-do-
7.	Sri Surya Constructions	24.3.2004	-do-	Color Granite	10-00	NOC not received
8.	Sri Sunitha Constructions	-do-	-do-	-do-	10-00	-do-
9.	Sri Lakshmi Constructions		-do-	-do-	10-00	-do-

18. It is also averred that the 4th respondent received road metal and building stone and colour granite applications for the same survey number requesting for grant. As the rates of seigniorage fee is informed that the rock types are useful for cutting and polishing, the quarry lease applications received for grant of road metal and building stone were proposed for rejection by the Deputy Director of Mines and Geology, Vizakhapatnam under single file system vide office note

dated 17.02.2005.

19. Similarly, the 4th respondent office also submitted proposals to the Director of Mines and Geology, Hyderabad for grant of colour granite applications of M/s. Galaxy Rockmin Private Limited and M/s. Natraj Enterprises on 22.02.2005 under single file system. It is also stated that the Deputy Director of Mines and Geology, Visakhapatnam, after examining the proposals of the Assistant Director of Mines and Geology, Vizianagaram, issued show cause notice to the road metal applicants calling for their explanation and thereafter rejected the quarry lease for road metal applications including that of the petitioner as there was no provision under the Rules to convert road metal application to colour granite application even though it was received from the same applicant. Further there is no provision to give preference to the earlier applications.

20. It is also stated that the petitioner submitted the application for colour granite on 15.04.2005 as per the Rules by which time the 4th respondent submitted proposals to the Director of Mines and Geology, Hyderabad on the applications received up to 22.02.2005. The Deputy Director of Mines and Geology, Visakhapatnam issued show cause notice on 31.03.2005 to the road metal applicants as to why their applications should not be rejected as the material is fit for cutting and polishing and rejected the same. The petitioner's application for colour granite was received on 15.04.2005, as such it was not mentioned in the order passed by the Director of Mines and Geology, Hyderabad.

21. It is stated that it is a fact that this Court by judgment dated 08.08.2006 in WP.Nos.1883, 1884 and 4483 of 2006 quashed the revisional orders made by the 1st respondent in Memo No.14796/M.II/2005-06 dated 19.01.2006 and remitted the matter back to the Government for the purpose of affording opportunity to all the parties concerned and to make orders afresh in accordance with law.

22. Accordingly, hearing was conducted along with the parties and during the hearing, the parties came to a compromise and filed a compromise petition. As per the compromise arrived between the parties, they had agreed to share the area of 60% to the existing leaseholder and 40% to M/s. Sri Surya Constructions, M/s. Sunitha Constructions and M/s. Lakshmi Constructions. Basing on the compromise petition, the Government passed order vide memo No.12748/M-II(1)/2006 dated 02.04.2007 to grant leases strictly in conformity with the said compromise proposals.

23. The application of the petitioner was received by the 4th respondent on 15.04.2005 by which time already proposals were submitted in respect of the area in question to the 2nd respondent. Therefore, the application of the petitioner was not included in the rejection order. Further it is stated that the 4th respondent received the following applications after the date of submission of the proposals:

Sl.No.	Name of the applicant	Date of receipt	Extent applied
1	M/s. Gayatri Granites	15.04.2005	5.0 Hects
2	M/s. Srikanth Enterprises	27.07.2005	3.00 Hects
3	M/s. Orision Granites	03.08.2005	15.00 Hects
4	Sri M. Zulfikar Ali	12.12.2005	3.00 Hects
5	M/s. Satya Constructions	02.05.2006	2.00 Hects
6	M/s. Standard Granites	12.03.2007	2.00 Hects

24. It is also stated that among the above applications M/s. Orision Granites filed revision before the Government even though they have filed application at a later date and also filed WP.No.4883/2006 before this Court. As per Rule 12(5)(iii)(b), the order of preference will be given basing on the date of receipt of the application. Accordingly, the petitioner could not get any area as his prior applicant opted for the same area. Therefore, he has no right to claim on the applied area of the earlier applicant as per the Rules. Hence, there is no leftover area to consider the application of the petitioner and as such it was recommended for rejection by the 4th respondent vide his proposals dated 23.07.2007 and the matter is under examination before the 2nd respondent. The petitioner without waiting for the outcome of the order to be passed by the 2nd respondent, approached this Court.

25. It is also stated that the petitioner had not availed the remedy of revision under Rule 35-A of the Rules and neither challenged the rejection order made on 20.06.2005. It is also stated that in the rejection order dated 20.06.2005 the 3rd respondent had rejected all the applications filed for grant of road metal and building stone. Further in the very same order the 3rd respondent had also rejected the applications filed by respondent Nos.6, 7 and 8 for colour granite on the ground that they were latter applications. The petitioner's application was rejected on 20.06.2005 as it was for the grant of road metal and building stone. Hence, no notice was given to the petitioner for hearing by the 1st respondent.

Hence, it was prayed that the writ petition be dismissed.

26. Before taking up further discussion, in the light of the respective stands taken by the parties, it may be appropriate to refer to certain essential portions of the order impugned in the present writ petition. The impugned order already had been specified supra. In para 4 of the impugned order, WP.Nos. 1883, 1884 and 4483 of 2006 had been referred to. In para 7 it is specified that out of seven applications filed for the area, previously the grant orders were issued in favour of the 6th applicant i.e., Sri Gayatri Granites by dividing the area into two halves vide memo No.14796/M.II(1)/05-06 dated 19.01.2006. Aggrieved by these orders, the previous grantees have filed writ petition and this Court directed to give an opportunity to the respondents and to decide the issue afresh.

27. In para 8 it is specified that pursuant to the directions of this Court in WP.Nos.1883, 1884 and 4483 of 2006 dated 08.08.2006, the revision petitioner as well as respondents were called for hearing on 20.01.2007. During the time of hearing, the revision petitioner and the respondents have come to a compromise and filed a compromise petition.

28. In para 9 it is specified that according to the said compromise petition, the group of revision petitioner companies/firms and also group of respondent companies would like to share the areas in the ratio of 60:40 i.e., 60% to be held by M/s. Nataraj Enterprises Granites and Galaxy Rockmin Private Limited and 40% by M/s. Sri Surya Constructions, M/s. Sunitha Constructions and M/s. Laxmi Constructions as per the terms arrived in the said compromise proposals. Considering the said compromise proposals, the revision petition is disposed of with a direction to the Director of Mines and Geology to grant the leases strictly in conformity with the said compromise proposals among the revision petitioner as well as respondents to whom the leases were earlier granted. Further, it is specified in para 10 that as far as M/s. Orion Granite is concerned, the application deserves to be rejected since they do not have any priority. In para 11 it is specified that the Director of Mines and Geology is directed to take necessary further action in the matter.

29. The relevant portion of the order made in WP.Nos.1883, 1884 and 4483 of 2006 dated 08.08.2006 already had been referred to supra. The main grievance of the petitioner is that though a general order had been made without putting the petitioner on notice again the reconsideration was taken up by the Government and hence such action is not in accordance with the orders made by this Court.

The specific stand taken by the 4th respondent is to the effect that the petitioner never questioned the rejection order and since the later application is a belated one and should not be considered in the light of the priority given to the applicants and inasmuch as by that time the other applications were forwarded, the question of issuing notice to such parties, who have not availed the remedy at all would not arise and hence the decision being in conformity with the order made by this Court, the same to be confirmed. It is no doubt true that the petitioner had not availed the remedy of revision and had not challenged the rejection order made on 20.06.2005. It is also true that the 4th respondent had given certain particulars of the applications received after the date of submission of the proposals at para 9 of the counter-affidavit.

30. Rule 35 dealing with appeal reads hereunder:

> "**35. Appeal:-** An appeal against any order passed by the Assistant Director or Deputy Director, (Joint Director) under these rules shall lie to the Director within a period of two months from the date of communication of such order to the party aggrieved and an appeal against an order of the Director shall be to the Government in like manner."

31. Rule 35-A deals with revision and the said provision reads hereunder:

> "**35-A. Revision-** The Government may either suo motu at any time or on an application made within ninety days, call for and examine the record relating to any order passed or proceeding taken by the Director, (Joint Director), Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the legality or propriety of such order or as to the regularity of such proceedings and pass such order in reference thereto as they think fit:
>
> Provided that no order adversely affecting any person shall be passed under this rule unless such person has been given an opportunity of making his representation."

32. Rule 35-C deals with application for appeal/revision and the said provision reads as hereunder:

> "**35-C. Application for appeal/revision:-** Any appeal against any order passed by the Assistant Director or the Deputy Director or Joint Director filed before the Director under Rule 35, of revision against any order passed by the Director, Joint Director, Deputy Director or Assistant Director filed before the Government under Rule 35-A of these rules shall be made in triplicate in Form J within the period specified in Rule 35 or 35-A of these rules, along with Treasury receipt shown that the fees specified in Rule 35-B of these rules has been paid into a Government Treasury, or in any Branch of State Bank of India/Hyderabad conducting

the Treasury business to the credit of the head of account is specified therein:

Provided that any such application may be entertained after the said period of two months/ninety days specified in Rule 35-A, if the applicant satisfies the Director/State Government that he had sufficient cause for not making the application within the specified time."

33. In the backdrop of the factual matrix and also in the light of the specific stand taken in the counter-affidavit by respondent No.4, if the later date of the application to be taken into consideration, the non-issuing of notice to such applicant being in later point of time cannot be found fault. But, however, in the historical background of the litigation if carefully examined, the said application being for a different purpose, conversion of such application is impermissible. In the light of the same, there is no necessity of issuing any notice even in the light of the directions issued by this Court. In substance, this appears to be the stand taken by the respondents.

34. It is also true that certain other applications received later in the point of time after proposals had been specified in para 9 of the counter-affidavit. However, in the impugned memo, no doubt in a different context the name of the petitioner also had been referred to. The distribution of State largesse to be in accordance with the relevant statutory provisions and the rules and these cannot be in violation thereof. Further such actions not to be discriminatory, arbitrary, but should be in conformity with the constitutional mandates and directives as well.

35. It is true that the petitioner, who had not availed the remedy of revision, may not fall under the category of parties on whom the notice to be served. Though the impugned order as such cannot be found fault on this ground, even as per the respective stands taken by the parties, there are several competing applicants and no doubt on the ground of priority, these were considered at a later point of time and the matters were carried by way of writ petitions and the same had been remitted to the Government with certain directions.

36. In the case of distribution of State largesse adopting the compromise proposals of the applicants in the considered opinion of this Court may not be just and proper. The merits and demerits of the applications to be considered and the gain to the public exchequer always to be kept in mind.

37. The competitive applicants, who approach the concerned authorities for consideration, not to be discouraged provided such applications are in accordance with law and on a careful scrutiny of the Act and the Rules, the consideration, acceptance or rejection or recommendation on the strength of the compromise

proposals of the parties appear to be impermissible since the same being by distribution of State largesse, the same are not to be arbitrary or discriminatory.

38. The very concept of compromise in a way would amount to collusion. The competitive spirit of the applicants not to be discouraged in the interest of the public exchequer and in the event of any infirmity, it would be always open to the authorities to call for applications afresh in accordance with law and decide the same in accordance with the statute and the rules governing the field.

39. This Court is thoroughly satisfied that the impugned order on the strength of the compromise which had been specifically recorded being contrary to the provisions of the Act and the Rules framed thereunder referred to supra and is of the considered opinion that the impugned order is liable to be quashed and liberty be given to the competent authority to further proceed with the matter in accordance with law as per the Act and the Rules.

40. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

P.S. NARAYANA, J

Date: .11.2007
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